

FILED  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH, TEXAS

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

2006 FEB 15 AM 9:23

FLEXIBLE INNOVATIONS, LTD.,

Plaintiff,

v.

AMERICAN COVERS, INC. d/b/a  
HANDSTANDS,

Defendant.

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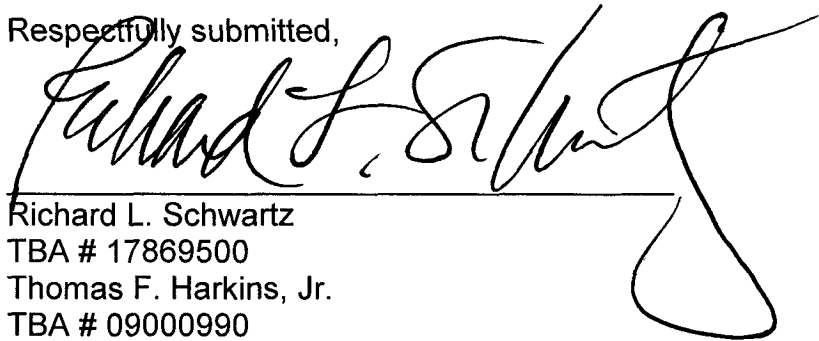
CIVIL ACTION NO.  
4-05-CV-021-A

**APPENDIX TO PLAINTIFF'S  
MOTION FOR CONTEMPT**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Appendix Pages</u></b>
A	Affidavit of Fred Antonini	1-5
A1	Flexible's "EGRIPS" U.S. Trademark Registration 2,899,410	6
A2	Agreed Partial Consent Judgment, signed and filed May 18, 2005	7-8
A3	Evidence of Defendant ACI's Continued Use of "IGRIP™"	9
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<u>Exhibit</u>	<u>Description</u>	<u>Appendix Pages</u>
B	Affidavit of Fred Antonini Concerning Confidential Settlement Agreement	15-16
B1	Confidential Settlement Agreement, effective May 10, 2005 (Under Seal)	(Confidential) 17-25

Respectfully submitted,



Richard L. Schwartz

TBA # 17869500

Thomas F. Harkins, Jr.

TBA # 09000990

**WHITAKER, CHALK, SWINDLE & SAWYER, L.L.P.**

301 Commerce Street, Suite 3500

Fort Worth, TX 76133-4168

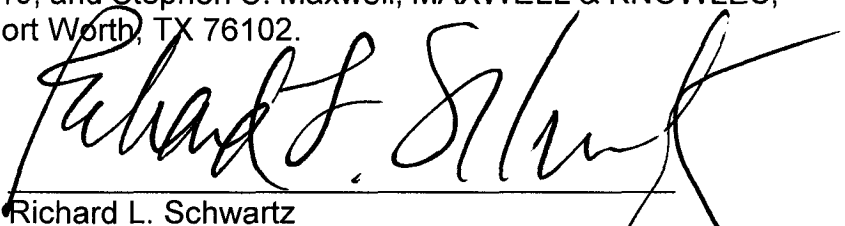
Phone: (817) 878-0500

Fax: (817) 878-0501

**ATTORNEYS FOR PLAINTIFF  
FLEXIBLE INNOVATIONS, LTD.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 13<sup>th</sup> day of February, 2006, I served a copy of this instrument by First Class, United States mail, postage prepaid, on counsel for Plaintiff, Peter M. de Jonge and Nathan S. Winesett, THORPE NORTH & WESTERN LLP, P.O. Box 1219, Sandy, Utah 84091-1219; and Stephen C. Maxwell, MAXWELL & KNOWLES, PC, 100 East 15<sup>th</sup> St., Ste. 120, Fort Worth, TX 76102.



Richard L. Schwartz

**APPENDIX TO PLAINTIFF'S MOTION FOR CONTEMPT**

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**PAGE 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FLEXIBLE INNOVATIONS, LTD.,

Plaintiff,

v.

AMERICAN COVERS, INC. d/b/a  
HANDSTANDS,

Defendant.

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CIVIL ACTION NO.  
4-05-CV-021-A

**AFFIDAVIT OF FRED ANTONINI**

I, Fred Antonini, upon oath do solemnly swear:

1. I am above the age of twenty-one years, have never been convicted of a felony or crime of moral turpitude, and am fully competent to make this Affidavit.

2. I am the President of Antonini Enterprises, Inc., the general partner of FLEXIBLE INNOVATIONS, LTD. ("Flexible") and as such am duly authorized to make this Affidavit on its behalf.

3. Flexible has been in the business of designing, marketing, and selling frictional holding products, which operate by friction to hold electronic devices, like cell phones, iPods, and the like in place on surfaces, such as the dash of a car.

4. In January 2003, Flexible decided to adopt and use a mark for these items and subsequently did adopt and begin using the mark "**EGRIPS**" for its frictional holding products, which it has continuously used in commerce in the United States from June 2003

**AFFIDAVIT OF FRED ANTONINI**

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**PAGE 1**

to the present. The web site, [www.egrips.com](http://www.egrips.com) displays the wide variety of Flexible's current "**EGRIPS**" branded frictional holding products.

5. Flexible registered the "**EGRIPS**" mark with the United States Patent and Trademark Office on November 2, 2004, as U.S. Trademark Registration No. 2,899,410, a true and accurate copy of which is attached as Exhibit "A1."

6. Subsequently, I learned in the marketplace that AMERICAN COVERS, INC. d/b/a HANDSTANDS ("ACI") was using the mark "**IGRIP**" on similar products. I considered this to be confusingly similar to Flexible's "**EGRIPS**" mark, and I instructed Flexible's counsel to pursue the matter.

7. A suit was filed on Flexible's behalf in this Court against ACI.

8. A settlement was reached with ACI in a Confidential Settlement Agreement ("CSA") effective May 10, 2005, whereby ACI, among other things, agreed "to cease the promotion, advertising, and selling any of its frictional holding products under the "**IGRIP**" mark or any other mark that is confusingly similar to Flexible's "**EGRIPS**" mark." I signed the CSA on behalf of Flexible.

9. A true, accurate, and complete copy of the CSA is attached to my separate Affidavit Concerning Confidential Settlement Agreement, so that the CSA may be filed under seal.

10. Further, I am aware of (and which is also part of the Record) that an Agreed Partial Consent Judgment ("APCJ") was signed by this Court and filed on May 18, 2005. A true and accurate copy of the APCJ is attached as Exhibit "A2" hereto.

11. During January 5-8, 2006, I and other Flexible associates attended the CONSUMER ELECTRONICS SHOW ("CES") in Las Vegas, Nevada, at which time the ACI's trade show booth was visited.

12. Attached as Exhibit "A3" hereto is a true and accurate photocopy of ACI's product packaging with product that Flexible secured at the CES trade show. The face of ACI's product packaging prominently displays – "**IGRIP**<sup>™</sup> HOLDS Ipod<sup>™</sup> ON DASH" – followed below by a picture of a frictional holding pad with the mark "**IGRIP**" formed in the pad, with an electronic device placed on the pad. The bottom of the product packaging reads "Perfect Companion for all iPods<sup>™</sup>" and below that, "no more slipping or sliding." The back of the product packaging prominently displays the "**IGRIP**" mark. This product was being marketed and sold by ACI at the CES trade show. I consider this to be a clear violation of the APCJ.

13. In addition, attached as Exhibit "A4" is a photocopy of an ACI product packaging marketed as "**GRIPS**<sup>™</sup>" (along with the word "Gadget") for a frictional holding product that Flexible also secured at the CES trade show. In my opinion, ACI's usage of "**GRIPS**," whether alone or in combination with "Gadget," is a breach of the CSA, paragraph 3.

14. Attached as Exhibit "A5" is a photograph of a portion of ACI's booth as it appeared at the Las Vegas CES trade show. This photograph shows five "Gadget **GRIPS**" as showcased under a heading of "Gadget **GRIPS**<sup>™</sup>" on display, and at the far right, displayed the "**IGRIP**" product of ACI. This ACI display, which Flexible associates saw, was presented in conjunction with sales or marketing of ACI's anti-slip, frictional holding

products. In my opinion, this violates both the mandate of the APCJ and the terms of the CSA.

15. I subsequently checked ACI's website at [www.handstands.com](http://www.handstands.com) and discovered that ACI continues to use "**IGRIP**" as a link to associate web users with ACI's frictional holding products and "**GRIPS**" for its frictional holding products, as shown in Exhibit A6, Appx at 11-12, respectively.

16. During February 8-10, 2006, I attended the ASI (Advertising Specialties) Trade Show in Dallas, Texas. Attached as Exhibit A7, Appx at 13, is a photograph showing a portion of ACI's display as used at this trade show, showing its display and marketing of its "**GRIPS**" frictional holding products.

17. I consider Flexible's use of the "**EGRIPS**" mark to be fundamental to and of extreme benefit to the business of Flexible in marketing its elastomeric applique frictional products, as it is Flexible's primary market identifier for its products.


18. I believe that Flexible has been harmed as a result of ACI's continued marketing and sales at this trade show (and perhaps due to otherwise being used since the APCJ, as may be discovered) from ACI's continued use of "**IGRIP**." Further continued use of the "**IGRIP**" mark by ACI will substantially damage Flexible's reputation and good will in the marketplace and will otherwise damage and harm Flexible's business.

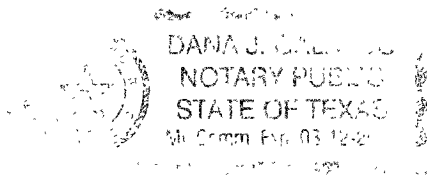
19. It is my opinion, as the general partner of Flexible, that ACI's use of "**IGRIP**" and "**GRIPS**," as trademarks, is confusingly similar to Flexible's "**EGRIPS**" mark as used in the frictional holding product marketplace.

FURTHER, Affiant sayeth not.

  
Fred Antonini

SWORN AND SUBSCRIBED TO BEFORE ME, on this 13<sup>th</sup> day of February, 2006.

  
NOTARY PUBLIC, STATE OF TEXAS



Int. Cl.: 17

Prior U.S. Cls.: 1, 5, 12, 13, 35 and 50

Reg. No. 2,899,410

United States Patent and Trademark Office

Registered Nov. 2, 2004

Corrected

OG Date Nov. 8, 2005

**TRADEMARK  
PRINCIPAL REGISTER**

**EGRIPS**

FLEXIBLE INNOVATIONS, LTD. (TEXAS  
LIMITED PARTNERSHIP)  
P.O. BOX 101029  
FORT WORTH, TX 761851029

FOR: ELASTOMERIC APPLIQUE FOR  
PLACEMENT ONTO HANDHELD ELEC-  
TRONIC DEVICES TO PROVIDE ANTI-  
SLIP AND SHOCK ABSORPTION, IN  
CLASS 17 (U.S. CLS. 1, 5, 12, 13, 35  
AND 50).

FIRST USE 6-5-2003; IN COMMERCE  
6-5-2003.

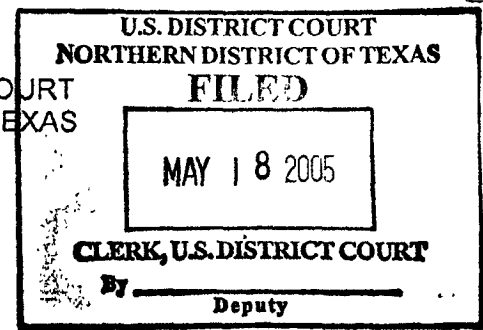
SER. NO. 78-200,215, FILED 1-6-2003.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Nov. 8, 2005.*

**DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE**



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



FLEXIBLE INNOVATIONS, LTD.,

Plaintiff,

v.

AMERICAN COVERS, INC. d/b/a  
HANDSTANDS,

Defendant.

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CIVIL ACTION NO.  
4-05-CV-021-A  
A JURY IS DEMANDED

**AGREED PARTIAL CONSENT JUDGMENT**

On this day it was made known to the Court that the parties have partially compromised and settled the above-referenced matter, which terms of such settlement agreement are confidential, and that the parties desire that the Court enter this Agreed Partial Consent Judgment.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Jurisdiction is proper over the parties;
2. Flexible Innovations, Ltd. is the owner of all right, title, and interest in and to the mark and U.S. Trademark Registration No. 2,899,410 and all goodwill appertaining thereto;
3. American Covers, Inc. is enjoined from using "IGRIP" in association with its frictional holding products;

AGREED PARTIAL CONSENT JUDGMENT  
F:\STOR\RLS\FLEXI\ACI\JUDG WPD

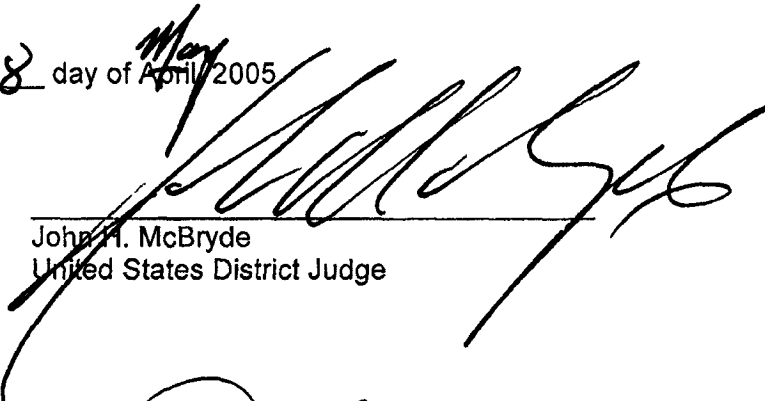
Page 1

4. All trademark claims made in the above-referenced matter, to wit, Count One and Count Two of Plaintiff's First Amended Complaint are hereby dismissed with prejudice;

5. Nothing herein affects Count Three of Plaintiff's First Amended Complaint; and,

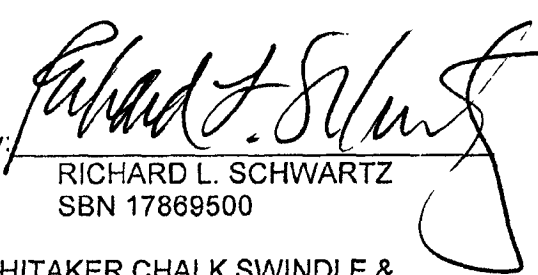
6. Each of the parties hereto shall bear its own costs and attorneys' fees incurred in this action to date.

*Agreed*  
~~IT IS SO ORDERED~~ on this 18 day of May 2005

  
John H. McBryde  
United States District Judge

AGREED AS TO FORM  
AND CONTENT:

By:

  
RICHARD L. SCHWARTZ  
SBN 17869500

WHITAKER CHALK SWINDLE &  
SAWYER L.L.P.  
301 Commerce Street, Suite 3500  
Fort Worth, TX 76102-4186  
(817)878-0500  
Fax: (817)878-0501  
[rschwartz@whitakerchalk.com](mailto:rschwartz@whitakerchalk.com)

ATTORNEYS FOR PLAINTIFF  
FLEXIBLE INNOVATIONS, LTD.

By:

  
PETER M. DE JONGE

THORPE NORTH AND WESTERN, LLP  
8180 South 700 East, Ste. 200  
Sandy, Utah 84070-0562  
(801)566-6633  
Fax: (801)566-0750  
[dejonge@tnw.com](mailto:dejonge@tnw.com)

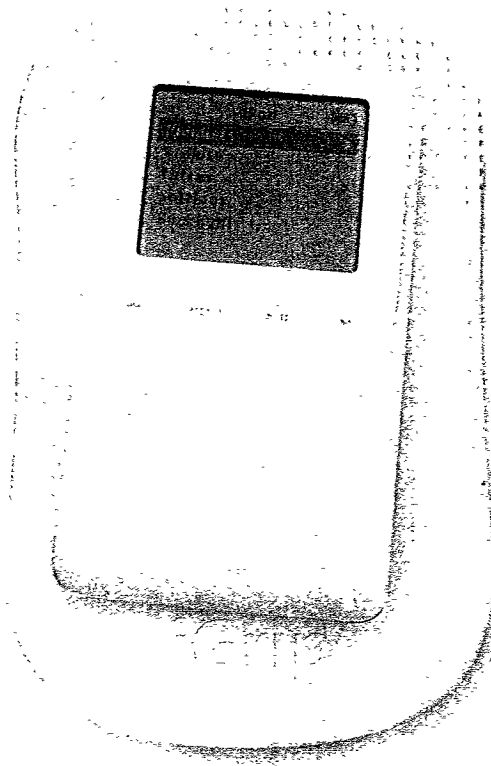
ATTORNEYS FOR DEFENDANT  
AMERICAN COVERS, INC. d/b/a  
HANDSTANDS

AGREED PARTIAL CONSENT JUDGMENT  
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# iGrip™

HOLDS IPOD™ ON DASH



Perfect Companion for all iPods™  
no more slipping or sliding

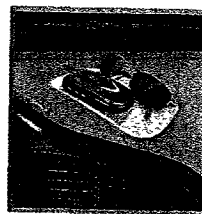
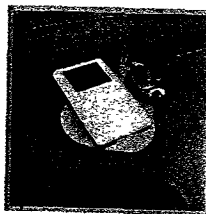
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# iGrip™

HOLDS IPOD™ ON DASH

## FEATURES

- Holds "Stuff" on Dash
- Contours To All Dashboards
- No Adhesives, Leaves No Residue
- Moveable / Washable



Model# 10015 iGrip™ Sticky Pad®



[www.HandStands.com](http://www.HandStands.com)

iGrip™ uses HandStands®  
Sticky Pad® technology

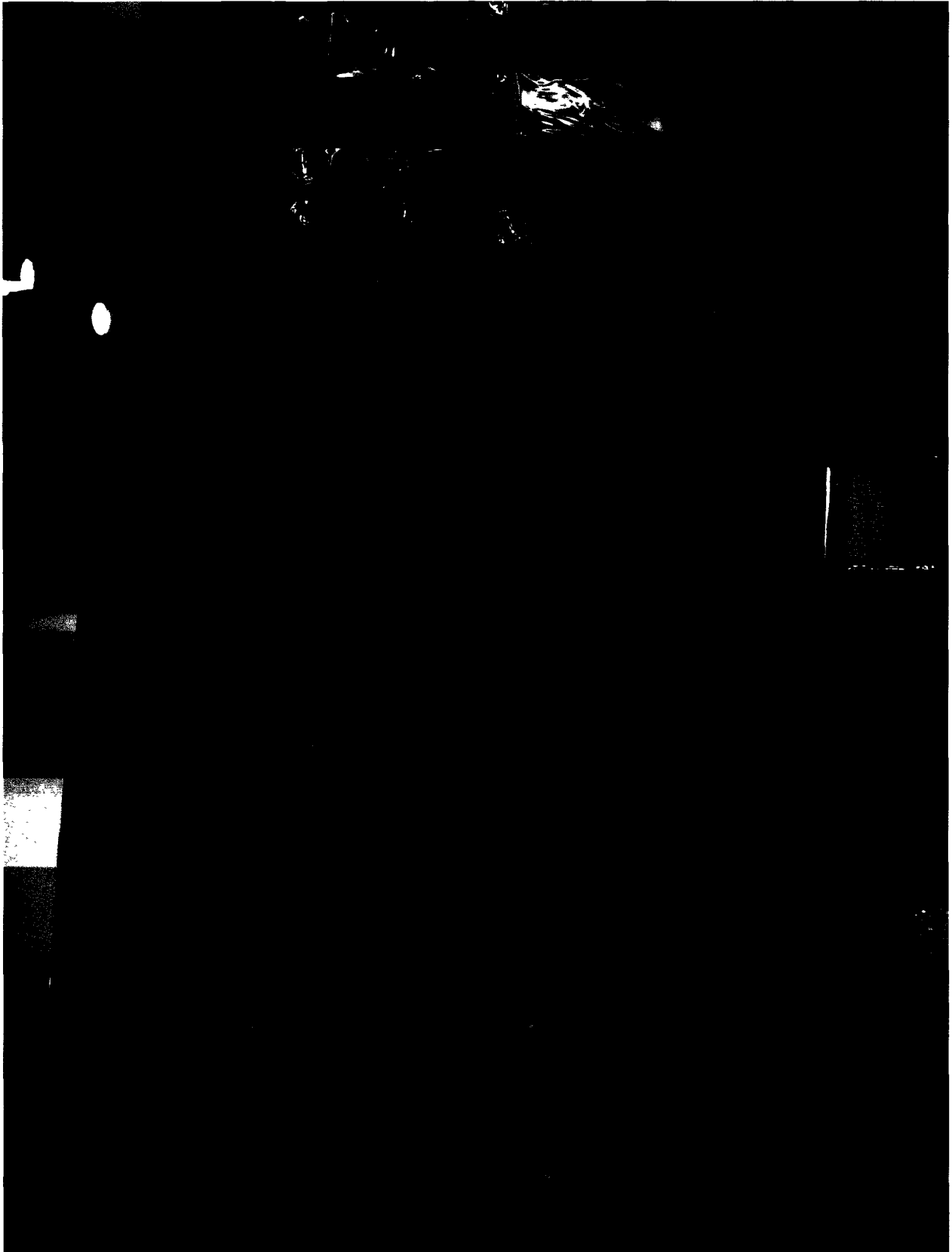


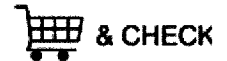
Made in Taiwan / Patent No. 6,673,409

iPod™ is a registered trademark of Apple Computer, Inc









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Hot NEW  
Product ▶

The  
**BUG**  
AIR FRESHENER



Search By Product

WHAT'S HOT

Results for iGrip

Air Fresheners

1 HandStands: Retail: Download Images

Download images of your favorite HandStands® products! iGrip, Sticky Pad, Mouse Mats, and the goes on!

URL: <http://www.handstands.com/retail/download/> Score: 100% Date: - Size: 21 kB

iPod/Computer  
Accessories

2 HandStands: Retail: Search

HandStands: Retail: Search mmLoadMenus(); SEARCH Match ANY word Match ALL words •  
DOWNLOAD IMAGES • PRODUCT SAFETY • SALES SHEETS • RETAIL LOCATOR •  
PROMOTIONAL...

URL: <http://www.handstands.com/retail/search.shtml> Score: 20% Date: - Size: 17 kB

Automotive  
Accessories

[ 1 ]

CD/DVD  
Media Storage

Fitness & Fun

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Hot NEW  
Product ▶

**iSnug™**  
The Ultimate in iPod™ Protection



Search By Product

## WHAT'S HOT

Air Fresheners

iPod/Computer  
Accessories

Automotive  
Accessories

CD/DVD  
Media Storage

Fitness & Fun

[VIEW LARGER IMAGE](#)



## Gadget Grips™

E-Mail To Friend

MSRP: \$5.99

### Features:

- Holds any Gadget on your car
- 9 cutouts for various digital c
- No adhesives or magnets
- Perfect for iPods and Cell Ph
- Washable, reusable, and mc

### TESTIMONIALS

Size: 7 3/8" x 3" x 5/16"

[ADD TO CART ▶](#)



## Related Products:



Sticky Pad®  
Color: Black

MSRP: \$6.99

[VIEW PRODUCT](#)



Super Size Sticky Pad®  
Color: Black

MSRP: \$9.99

[VIEW PRODUCT](#)



iSticky Pad®  
Color: iPod™ White

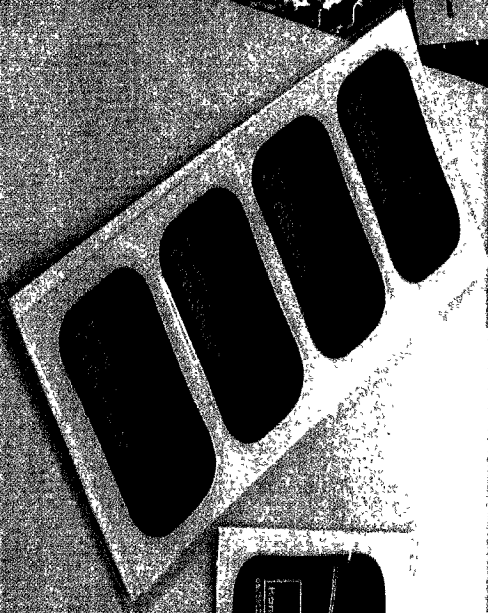
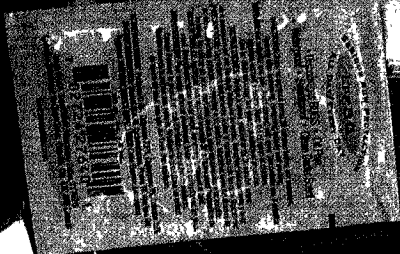
MSRP: \$8.99

[VIEW PRODUCT](#)

[• DOWNLOAD IMAGES](#)   [• PRODUCT SAFETY](#)   [• SALES SHEETS](#)   [• RETAIL LOCATOR](#)   [• PROMOTIONAL PRO](#)

Appx 13

Product  
BAGS ALIVE  
When  
it  
live Way  
250 Pieces  
ENTRY #54  
ASI  
SHOW



**Gadget**  
**ADVANTAGES** — New Product  
Holds Your Digital Gadgets in Place  
No Magnets — No Adhesives!  
PRICE: \$2.99 (R)  
ENTRY #197  
ASI  
SHOW

**HANDSTANDS**  
BOOTH #607



**Gadget**

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CIVIL ACTION NO.  
4-05-CV-021-A

**AFFIDAVIT OF FRED ANTONINI CONCERNING  
CONFIDENTIAL SETTLEMENT AGREEMENT**

I, Fred Antonini, upon oath do solemnly swear:

1. I am above the age of twenty-one years, have never been convicted of a felony or crime of moral turpitude, and am fully competent to make this Affidavit.

2. I am the President of Antonini Enterprises, Inc., the general partner of FLEXIBLE INNOVATIONS, LTD. ("Flexible") and as such am duly authorized to make this Affidavit on its behalf.

3. Attached hereto as Exhibit B1, Appx at 16-24, is a true and correct copy of the Confidential Settlement Agreement ("CSA") entered into between Flexible and ACI whereby ACI, *inter alia*, agreed "to cease the promotion, advertising, and selling any of its frictional holding products under the 'IGRIP' mark or any other mark that is confusingly similar to Flexible's 'EGRIPS' mark."

**AFFIDAVIT OF FRED ANTONINI CONCERNING  
CONFIDENTIAL SETTLEMENT AGREEMENT**


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**PAGE 1**

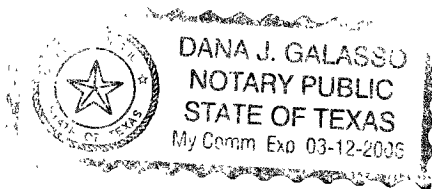
4. Paragraph 9 of the CSA requires confidentiality of the terms of the CSA, "except as may be required by law, by order of a court, or be required for disclosure to a party's accounting or legal advisors."

5. I executed the CSA on behalf of Flexible.

**FURTHER**, Affiant sayeth not.

  
\_\_\_\_\_  
Fred Antonini

SWORN AND SUBSCRIBED TO BEFORE ME, on this 13 day of February, 2006.



  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**Ex B1**

**Confidential Settlement Agreement  
Effective May 10, 2005 (Under Seal)**

***CONFIDENTIAL***

**Exhibit Not Filed Herewith  
Due to its Confidentiality**